

1988

# State of Utah v. Lawrence C. Russell : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

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IN THE SUPREME COURT IN AND FOR THE

STATE OF UTAH

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STATE OF UTAH,

880340

:

Plaintiff/Respondent, :

BRIEF OF APPELLANT

vs.

:

LAWRENCE C. RUSSELL,

:

Case No. 880340

Defendant/Appellant. :

Priority No. 2

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT AND COMMITMENT FOR AGGRAVATED  
BURGLARY, A FIRST DEGREE FELONY, AND CONSPIRACY TO  
COMMIT AGGRAVATED KIDNAPPING, A SECOND DEGREE FELONY  
IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR  
WEBER COUNTY, STATE OF UTAH, THE HONORABLE DAVID E.  
ROTH, PRESIDING.

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**FILED**  
FEB 7 1989

Clerk, Supreme Court Utah

IN THE SUPREME COURT IN AND FOR THE  
STATE OF UTAH

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STATE OF UTAH,	:	
Plaintiff/Respondent,	:	BRIEF OF APPELLANT
vs.	:	
LAWRENCE C. RUSSELL,	:	Case No. 880340
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## STATEMENT OF JURISDICTION

Jurisdiction is granted to this Court pursuant to Utah Code Annotated title 78-2-2 of Utah Rules of Criminal Procedure, Rule 26, Utah Code Annotated Title 77-35-26.

## ISSUES PRESENTED FOR REVIEW

Whether the Court abused its discretion in sentencing the Defendant to prison rather than placing him on probation or authorizing a 90-day diagnostic evaluation.

## CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES

### RULES AND REGULATIONS

There are no constitutional provisions, statutes or rules or regulations which are applicable in this case.

IN THE SUPREME COURT IN AND FOR THE  
STATE OF UTAH

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STATE OF UTAH,	:	
Plaintiff/Respondent,	:	BRIEF OF APPELLANT
vs.	:	
LAWRENCE C. RUSSELL,	:	Case No. 880340
Defendant/Appellant.	:	

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STATEMENT OF THE CASE

This is an appeal taken from the commitment of the Appellant to the Utah State Prison upon his pleas of guilty to Aggravated Burglary and Conspiracy to Commit Aggravated Kidnapping in the Second Judicial District Court, in and for Weber County, State of Utah.

STATEMENT OF FACTS

1. Appellant entered pleas of guilty to Aggravated Burglary, a first degree felony, and Conspiracy to Commit Aggravated Kidnapping, a second degree felony.

2. Appellant requested a sentencing hearing which was heard on August 15, 1988. Subsequent to this hearing the Court sentenced the Defendant on August 15, 1988 to serve an indeterminate term of one to fifteen years in the Utah State Prison on each charge. Sentences on each charge were to run concurrently.

SUMMARY OF ARGUMENTS

1. That the Court abused its discretion in sentencing

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the Appellant to a prison term and not placing him on probation or authorizing a 90-day diagnostic evaluation.

POINT I

THE COURT ABUSED ITS DISCRETION IN SENTENCING THE APPELLANT TO PRISON RATHER THAN PLACING HIM ON PROBATION BASED UPON THE FACT THAT APPELLANT DID NOT HAVE ANY PREVIOUS FELONY CONVICTIONS, AND UPON THE FACT THAT THE IMPACT OF APPELLANT'S ACTIONS ON THE VICTIM WAS NEGLIGIBLE.

After the appellant entered his plea in this matter a pre-sentence report was requested and a pre-sentence report was prepared. Based upon the pre-sentence report, Adult Probation and Parole Department recommended that the Appellant be sentenced to prison for an indeterminate period of 5 years to life on the Aggravated Burglary charge and to an indeterminate term of one to fifteen years in the Utah State Prison on the Conspiracy to Commit Aggravated Kidnapping charge.

The Appellant requested the Court to consider allowing the Appellant to undergo a 90-day diagnostic evaluation in lieu of a prison commitment. (Transcript, Page 69, Line 8 through 12). The Court denied this request at the time of sentencing. The basis for the request was that the Appellant had no prior felony convictions on his record.

In addition, the trial Judge acknowledged that the impact of Defendant's actions on the victim was negligible. (Transcript, Page 72, Line 8 through 12). There was no restitution indicated (Transcript, Page 73, Line 8 and 9).



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The cases of State vs. Gerrard, 584 P 2d 885 (Utah, 1978) and State vs. Shelby, 45 U.A.R. Page 11 (1986) are pertinent authorities sufficient to move this Court to determine this case. These cases hold:

"Before this Court will overturn the sentence given by the trial Court, it must be clear that the actions of the Judge were so inherently unfair as to constitute abuse of discretion."

CONCLUSION

In light of the fact that the Appellant had no prior felony record of any kind and that the impact of the Defendant's actions upon the victim in this case was negligible, it is respectfully submitted that the trial court abused its discretion in sentencing Appellant to a prison term and not placing him on probation or authorizing a 90-day diagnostic evaluation.

DATED this 6 day of February, 1989.

  
STEPHEN A. LAKER  
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the above Brief of Appellant to Paul Van Dam, Attorney General, at 236 State Capitol, Salt Lake City, Utah 84114 and two copies of the above Brief of Appellant to Lawrence C. Russell, P. O. Box 250, Draper, Utah 84020 via first-class U.S. Mail, postage prepaid this 6 day of February, 1989.

  
STEPHEN A. LAKER  
Attorney for Appellant

ADDENDUM

Transcript, Page 69, Lines 8 through 12	2
Transcript, Page 72, Lines 8 through 12	2
Transcript, Page 73, Lines 8 and 9	2

1 Mr. Allen, I think the Court should consider as an alternative  
2 to sentencing these individuals to prison, a 90 day evaluation.  
3 I think there are programs that they can avail themselves of  
4 that will help them with the problems, that they both admit  
5 they have, with regard to alcohol. If they don't do that,  
6 the Court still has all its options still left open to it.  
7 If they don't do exactly what is required of them, what the  
8 Court thinks, the Court still has all its options open for  
9 jail sentence, prison sentence, and I would ask the Court to  
10 consider a 90 day evaluation alternative to prison to give  
11 them a chance to show that they have learned what is required  
12 and what they need to learn so that this never happens again.

13 I reiterate, and just briefly, that this is not something  
14 that either of these individuals have shown by their past  
15 record that they are dangerous people in society. This is  
16 an isolated incident, and I hate to see the Court sentence  
17 someone to a five to life on that basis, given the mitigating  
18 circumstances that were presented here, having the entire  
19 thing before the Court and seeing what actually happened.

20 MR. DAROCZI: I will submit it on the basis of the  
21 recommendation. I don't know we need a 90 day evaluation.

22 MR. ALLEN: I have talked to the Probation Officer  
23 here today regarding this matter. He would not have any  
24 problem with the idea of reduction in sentence for purposes  
25 of sentencing.

1 happened, you would expect the victim at the end of all this  
2 to be a basket case emotionally, that he would require  
3 hospitalization for his injuries, and I would expect to see  
4 the kind of victim impact statement that would suggest that  
5 that person would need counseling and treatment and all sorts  
6 of things just to be able to put himself in a position to  
7 lead a normal life. We have none of that.

8       We have a victim who did not seek medical attention,  
9 who apparently did not appear to be badly beaten, who apparently  
10 was not seriously emotionally traumatized, who appeared at  
11 Preliminary Hearing and apparently made the impression on  
12 several people he wasn't taking the thing very seriously.

13       What these young men did to the victim, to an ordinary  
14 person would be considered a night of terror. For some reason  
15 it just doesn't seem to have impacted this victim that way.  
16 You can look at the three defendants in the courtroom today,  
17 none of them look very dangerous to me the way they sit now,  
18 separated, sober. I suspect all three of them together on  
19 the night in question, crazy drunk, carrying a club and a  
20 knife, appeared to be a lot more dangerous.

21       I don't doubt that at least at some point that the victim  
22 felt seriously threatened because of this incident. The  
23 crimes alone justify a prison commitment. I am reluctant to  
24 send young people this age for five to life commitment  
25 for this kind of a case with their background, with the facts

1 being what they are, and the victim's behavior being what  
2 it is.

3 So what I am going to do is sentence each of them to  
4 serve two terms in the State Prison of one to fifteen years.  
5 I will reduce the first degree felony to a second degree  
6 felony for sentencing purposes. The sentences will run  
7 concurrently.

8 There is no indication that there is any restitution  
9 owing in this case, no none will be ordered.

10 It is the Judgment and sentence of the Court then that  
11 both Lawrence Russell and Michael Grimsley be sentenced to  
12 the State Prison for a period of not less than one, which  
13 may be for fifteen years. The same sentences will be imposed  
14 on the aggravated kidnapping, a second degree felony. Did  
15 I say that?

16 MR. ALLEN: Conspiracy to commit aggravated kidnapping.

17 THE COURT: Conspiracy to commit aggravated kidnapping.  
18 The first degree felony, I will reduce for sentencing purposes  
19 to a second degree .

20 You each have a right to appeal this case if you want to  
21 do that. You have to do it within thirty days.

22 Court is in recess.  
23  
24  
25